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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 922

AMERICAN EXPORT LINES, INC., as Owner of S. S. EXMOUTH,

Petitioner,

THOMAS KENWORTHY'S SONS, *et al.*,

Cargo Intervenors,

against

S. S. HELLENIC BEACH, her engines, boilers, etc., and HELLENIC LINES, LTD.,

Respondent.

HELLENIC LINES, LTD., Owner of S. S. HELLENIC BEACH,

Respondent,

against

S. S. EXMOUTH, her engines, boilers, etc., and AMERICAN EXPORT LINES, INC.,

Petitioner.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

American Export Lines, Inc., as owner of the S. S. EXMOUTH, has petitioned for a Writ of Certiorari to review the determination of the Court of Appeals for the Second

Circuit which reversed the decision of the District Court and found the S. S. EXMOUTH solely at fault for the collision with the S. S. HELLENIC BEACH. Respondent herein, Hellenic Lines, Ltd., respectfully opposes the granting of such writ.

Question Presented

Whether this Court, contrary to the expressed intent of Rule 19, should grant review to a decision of the Court of Appeals which in no manner departs from the accepted and usual course of judicial proceedings and which is in full accord with the applicable decisions of this Court and which is consistent with decisions of other Courts of Appeals.

Statement

Respondent accepts the recital of the facts leading to collision between EXMOUTH and HELLENIC BEACH as set forth in the opinions rendered by the Court of Appeals (P. 23-34)* and the Admiralty trial court (P. 13-22) and in the findings of fact entered by that trial court (L. A. 295-296). Petitioner apparently cannot seriously dispute those statements of fact since, in light of the damning circumstances, petitioner has judiciously refrained from efforts to prove its vessel, EXMOUTH, free from fault for the collision with HELLENIC BEACH. The consistent defense of petitioner has been an attempt to magnify any real or imagined action or failure of action on the part of HELLENIC BEACH which, on hindsight, *might* have caused a collision, though not necessarily this collision. Through this argument, coupled with a thoroughly inconsistent approach to the legal effect of the jury award in a personal

* References to material contained in the appendices annexed to the Petition are indicated by P. followed by the page number. References to material contained in the appendix submitted by Libellant-Appellant below are indicated by L. A. followed by the page number.

injury adjudication, petitioner has attempted to achieve divided fault. Refusal by the Court of Appeals to accept those spurious arguments has resulted in the petitioner's unfounded requests for review by this Court.

Respondent submits that not only are there no considerations raised herein which affect the public interest or the settled state of the law, but there are no factors which bespeak a failure of justice, for the entire record establishes that the decision of the Court of Appeals was eminently correct, fully justified on the record, and logically and legally the only result attainable herein.

Argument

Petitioner has advanced several proposals by which it seeks to place this litigation within the purview of causes subject to review by this Court. By quantity, petitioner apparently hopes to overcome the inherent qualitative weaknesses of the following arguments:

I.

The petitioner contends that HELLENIC BEACH violated a rule of navigation by sounding a whistle signal and thereafter failing to act in accordance with that signal.

If petitioner's assertive repetition could make it so, the HELLENIC BEACH would be at fault. However, petitioner in aid of its argument studiously and necessarily ignores three basic facts which are clearly established in the record:

1. The District Court found, and the Court of Appeals concurred, that by reason of the wanton navigation of the EXMOUTH under the actual command of a disoriented and intoxicated master, the collision of the vessels was *inevitable*. The choice of words was the Court's; the finding is absolute as to the causation of and the liability for the collision.

2. Petitioner's knowledge of any whistle signals is derived solely from the testimony of respondent's officers that two one-blast signals were given preceding the collision. Not one person on watch aboard EXMOUTH heard the whistle signals of HELLENIC BEACH and, of necessity, no reliance was placed thereon by EXMOUTH.

3. HELLENIC BEACH, as the *privileged* vessel in a crossing situation, was statutorily entitled to hold—and indeed *burdened* with the obligation of holding her course and speed, which obligation she concededly fulfilled.

II.

The petitioner contends that HELLENIC BEACH was likewise at fault in failing to anticipate the erratic navigation of EXMOUTH and in failing to take evasive action when the vessels were one-half mile apart.

The trial court found that this was a legal fault of HELLENIC BEACH; the Court of Appeals reversed this conclusion.

We point out to the Court that insofar as the District Court found as a fact that the navigation of EXMOUTH made the collision inevitable, the subsequent determination that adherence by HELLENIC BEACH to course and speed contributed to the collision is a conclusion insupportable logically and without basis in law or fact. The Court of Appeals was fully justified in striking the latter contradictory conclusion of the trial court and in deciding the matter on the basis of the primary all inclusive finding of the fact of the inevitability of the collision. Petitioner's desperate attempt to equate this action by the Court of Appeals with an appellate trial *de novo* represents a fundamental misunderstanding of the role of a reviewing court.

We respectfully suggest to this Court that the argument of statutory violation advanced by petitioner raises two disturbing and unanswerable questions:

1. What evasive action on the part of a low-powered Liberty vessel will escape the unpredictable navigation of a high-powered juggernaut under the command of an alcohol-befogged master?

2. What would be the position of the privileged vessel if she, in violation of the statute, abandoned her course and speed, and the collision then occurred?

III.

The petitioner contends that the parties to the collision action were precluded from litigating the question of the sole fault of either vessel by a prior judgment entered against both vessels in favor of a seaman injured in the collision. No comfort is derived by petitioner from authorities cited for this proposition.

The trial court adopted petitioner's contention. The Court of Appeals rejected it out of hand.

Rather than labor the question, respondent adopts in full the carefully supported and documented reasoning of the Court of Appeals majority opinion as the most telling argument in opposition to the contention of the petitioner. It is an argument well founded in law and certainly applicable to the facts of this case. This is not an example of repetitive litigation. The seaman's action was brought before a jury on the civil side of the Court. The substantive rules of admiralty collision law had little or no application in the seaman's action. As a practical matter, the fundamental vessel defenses of Major-Minor Fault and errors *in extremis* were unavailable to this respondent in the seaman's action since under the substan-

tive law applicable to that action those doctrines were not defenses to HELLENIC BEACH as against the seaman. As a matter of strict law, the mere intervention of either defense by HELLENIC BEACH in the seaman's action might be interpreted as an admission of fault sufficient to permit entry of judgment against HELLENIC BEACH on the pleadings.

The issue of collateral estoppel was raised by petitioner only during trial of the present litigation some two and one-half years after the jury award made to the injured seaman. No effort was made in that interim to act upon this unique theory which now appears so eminently proper to the petitioner. Other actions which arose from the collision have been settled pending outcome of the admiralty collision action between the vessels, a disposition hardly consistent with petitioner's present stand.

Conclusion

Accepting at face value the petitioner's election of the issues which will control the granting or denial of the instant writ, respondent submits that the petitioner has failed totally to advance one reason why, in the public interest, this Court should invoke jurisdiction. Additionally, petitioner has advanced the most unsubstantial arguments in support of its personal claim of prejudice.

On the record presently before this Court and in the interest of substantial justice, respondent respectfully submits that the instant petition must be denied.

Respectfully submitted,

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DANIEL L. STONEBRIDGE,
Of Counsel.